

JOINT SELECT COMMITTEE REPORTS OF LEGISLATIVE ASSEMBLY -1924

**The Indian Penal Code (Amendment) Bill
(age of consent) by Dr. Hari Singh Gour**

List of Reports of Select or Joint Committees
presented in the Legislative Assembly in 1924.

Serial No.	Short title of the Bill.	Date of presentation.	Remarks.
1. The Central Board of Revenue Bill.	18.2.24.		
2. The Indian Coinage Bill.	18.2.24.		
3. The Indian Penal Code('Amendment') Bill.	19.2.24.		
4. The Indian Tariff('Amendment') Bill.	26.2.24.		
5. The Indian Income-tax('Amendment') Bill.	10.3.24.		
6. The Indian Penal Code('Amendment') Bill(<i>Age of Consent</i>) by Dr. Hari Singh Gour.	15.3.24.		
7. The Steel Industry('Protection') Bill.	30.5.24.		
8. The Imperial Bank of India Bill.	8.9.24.		
9. The Indian Criminal Law('Amendment') Bill.	10.9.24.		
10. The Indian Merchant Shipping('Amendment') Bill.	11.9.24.		
11. The Land Customs Bill.	11.9.24.		

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill further to amend the Indian Penal Code was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. We have carefully considered whether the enactment of the Bill would produce a position in which the orthodox Hindu would be placed under the necessity of violating either the law of the land or the requirements of his religion. We recognise that in certain quarters the opinion is still widely entertained that the *Shastras* enjoin the consummation of marriage immediately on the attainment by the wife of the age of puberty, but we are satisfied that this view is rapidly losing ground and that, even here theoretically accepted, it tends to be honoured more in the breach than in the observance. We are also satisfied that failure to consummate marriage on the attainment by the wife of the age of puberty would nowhere constitute a religious offence to the commission of which any form of social penalty or religious expiation would attach. In these circumstances, we consider that the Bill should be proceeded with, but we recommend that its further progress be stayed until there has been an opportunity to elicit public opinion on our Report and on the Bill as amended by us.

3. We have carefully considered the expediency of modifying the provisions of clause 2 of the Bill. A minority of us are of opinion that a cautious advance should be made, and think that

the simplest course would be to raise the age of consent to 13 years both within and without the marital relation. A further minority, while accepting the raising of the age outside the marital relation to 14 years, would prefer within that relation to raise it to 15 years only, or in one case to leave the age at 12 years. The majority of us, however, favour the provision made in the Bill and we have, therefore, left the substance of clause 2 unaltered.

4. Some of those who favour the raising of the age within the marital connection to 13 years only would have been prepared, had their view prevailed, to leave the existing penalty untouched. We are, however, unanimously of opinion that if the age is raised to 14 years both within and without the marital connection, there should be a reduction of the maximum penalty in cases in which the sexual intercourse is between man and wife and the wife is between 12 and 14 years. By a majority we are of opinion that the reduction in question should be to imprisonment of either description for a term not exceeding two years, or fine or both. We have made the necessary addition to section 376 of the Indian Penal Code and a consequential amendment in Schedule II to the Code of Criminal Procedure, 1898, in clauses 3 and 4 which we have inserted in the Bill.

5. The Bill was published in the Gazette of India, dated the 23rd February, 1924.

6. We think that the Bill has been so altered as to require re-publication.

W. M. HAILEY.*

HENRY J. STANYON, COL.*

M. RAMACHANDRA RAO.

P. S. SIVASWAMY AIYER..

M. A. JINNAH.

GULAB SINGH.

N. M. JOSHI.

MD. YAKUB.

MADAN MOHAN MALAVIYA.*

K. RAMA AIYANGAR.*

V. N. MUTALIK.*

B. C. ALLEN.

BIPIN CH. PAL.

DARCY LINDSAY.

S. C. GHOSE.*

H. S. GOUR.

The 15th March, 1924.

* Subject to minute of dissent.

MINUTES OF DISSENT.

I am myself in favour of the more cautious course indicated at the beginning of paragraph 3, namely, to raise the age to 13 years for all purposes. I recommend this as an initial step, a further enhancement being taken when social conditions are improved.

W. M. HAILEY,--10-3-1924.

I agree generally with the Honourable Sir Malcolm Hailey that this is a matter in which we must advance cautiously—one in which the Legislature must move more or less with public opinion. Puberty, especially in India, does not arrive by clockwork at any particular age. Some girls at 12 years are still as undeveloped as if they were 9 or 10; others are more like girls of 14 or 15. Much depends on physique, heredity and environment. Therefore a public opinion or legislation guided only by puberty would be impractical. But of this there is no doubt that sexual intercourse with a girl as soon as she attains puberty is harmful to her, and against the interests of the race generally. Therefore I should like to see the age of consent raised to 14, and I should certainly support a provision to make non-marital intercourse with a girl under 14 punishable as rape. But so far as husband and wife are concerned, there seem to be practical difficulties in the way of effective legislation. With the husband and the parents of the girl of one mind who can possibly prove that the age of a particular girl is over 12 but under 14? A provision for reduced punishment in such a case will be a dead letter. Medical evidence of age will be found doubtful: vital statistics in most cases will prove of no value: and even if inquisitorial prosecutors can be found to institute cases against husbands in such cases Courts will not convict. If there is a feeling to raise the age all round to 13, I will support it, but I doubt its practical value in marriage cases.

H. J. STANYON, COL., M.L.A.,—11-3-1924.

I feel strongly that married persons ought not to be brought within the provision of the section where girls are over 12. The Hindu family system where many relations live together and the high sense of charity cultivated by its civilisation ought not to be lightly interfered with by legislation. Society fast improves in this direction. Statistics and the opinion of all members prove this endeavour. So law need not interfere at this stage on marital relations.

K. RAMA AIYANGAR.

I am entirely in favour of the age of consent being raised to 14 years as against a stranger. I am also in agreement with the view that even a person to whom a girl has been married, should not consummate the marriage, until the married girl has completed her fourteenth year. But unfortunately marriages are permissible and take place in large numbers before a girl has reached

the age of twelve. And in 65·7 cases out of a 100, Indian girls begin to menstruate between the ages of 12 and 14. The age of marriage and the period of the consummation of marriage are steadily rising, and I am inclined to believe that as a matter of fact marriages are not consummated in a very large number of cases before a girl has completed her fourteenth year. Still I think we ought not to overlook the fact that there is a widespread idea among the people that a young woman becomes fit to live with her husband as soon as she begins to menstruate. I agree with the opinion that this is a wrong idea. I myself think that a woman should live with her husband only after she has completed her sixteenth year. But in view of the fact that marriages take place before twelve and of the widespread belief to which I have referred above, and also the religious belief prevalent among a considerable section of the people that it is the duty of a husband to live with his wife after she has begun to menstruate, I do not think co-habitation by a husband with his wife who is above the age of 12 should be made punishable by law. I note that it is proposed to inflict a shorter term of punishment on a husband than that to which a stranger will be liable. But having given the matter my most careful consideration, I am unable to advise that such a law should be passed at present.

There is a widespread movement in the Hindu community to raise the age of marriage and to delay the period of the consummation of marriage even when a marriage takes place earlier than 12 years. I think that it will be right at least to postpone the enactment of such a law as is proposed and to leave it to Hindu social and religious reform associations to educate public opinion regarding the evil results of the consummation of marriage before the age of fourteen. I agree with the recommendation that the Bill as amended should be republished to elicit public opinion.

MADAN MOHAN MALAVIYA,—15-3-1924.

This Bill promises to be one of the "hardy annuals" before the Assembly. Exactly a Bill of similar nature was thrown out by the Assembly only in 1922.

In my view there appears to be no immediate urgency or necessity for the amendment sought to be effected by this Bill. Opinions were invited on the last occasion. A large majority of the opinions expressed the view that the amendment was not wanted, that it was not opportune, that the society was not prepared for it, that it will unnecessarily cause agitation in the public and that it is against the religious ideas of the Hindus. Since then (1922) there has been no change in the society, nor has there occurred any case or cause which calls for such immediate measure.

The mover of the Bill has failed to make out a case, that the evil is of such a magnitude that legislation is necessary. The evils are much exaggerated. His main reason is infant mortality and secondly the health of the girls. About the first I must say that it may be one of the many

reasons and not a very important too. Infant mortality is due more to economic causes, insanitary conditions and want of proper supply of milk. Similarly the health of the young girls is due to insufficient feeding, congestion, want of exercise, etc. It will be better for the reformers to turn their attention first to these things than to rush all at once to legislature.

The mover seeks mainly to attack marital relations. I am strongly opposed to this and I deprecate any attempt in such delicate social matters. If this law were to come in force the result would be that as soon as any marriage takes place the police will have to be on the look out to see if any connection takes place. They will have to enter the age of the girl in a register, see if the information is correctly given and at times when suspicion is roused, will have to resort to medical examination of the girl. Plainly put that is what is likely to happen. Looking to the Hindu sentiment, sentiment in high social families, this is simply revolting, revolting to the girl herself, to every member of the family. The result would be the ruin of the life of the girl herself whom it is intended to be protected, as the girl is likely to be abandoned if the husband goes to jail for her sake. This will be an instrument in the hands of the police to harass the people under one pretext or other and to screw out money in some cases and will only lead to very undesirable results.

It is opposed to the Hindu *Shastras*. The interference in religious matters will never be liked by the public and this would prove a source of agitation.

It is opposed to the custom which amounts to religion.

The society is not prepared for this legislation. I perfectly agree that the marriageable age is increasing. It has increased to about 12 and in some cases more. Leaving aside the reformers and some communities, marriage takes place when a girl is 12 to 13. Beyond this age, very few girls remain unmarried, unless under special circumstances. Including all communities, communities amongst which marriage takes place after puberty as a matter of course and the reformers, etc., the figure quoted is about 50 per cent. My experience is that over 80 per cent. girls are married at 12 and 80 per cent. husbands stand

the risk of being prosecuted. Under the circumstances the law will be either a dead letter or will be dangerous and catastrophic.

I don't agree even to extend the age up to 13 in the case of marital relations.

I will gladly support the extension of the age even up to 16 provided that the age as prescribed for the purpose of the exception is retained.

I agree that public opinion should be invited on this Bill and only in the light of public opinion should the Bill be proceeded with. Widest possible publicity should be given. The Bill with report of the Select Committee should be translated in all vernaculars.

V. N. MITALIK,—13-3-1924.

I am strongly opposed to Dr. Gour's amendment of the Indian Penal Code.

The girls in this country do certainly attain puberty at 12, and the Hindu religion enjoins at any rate that it is commonly believed that it does not enjoin early marriage and its consummation as soon as the girls attain puberty. I cannot conceive that you should penalize consummation of marriage, as many parents and guardians still believe that it is religious duty to perform.

I ought to say that early marriages are gradually diminishing amongst the educated people. I think by raising the age of consent to 14 it will be attended with serious consequences to the State.

I agree with Mr. Rangachariar when he says "So far as married women are concerned it will be fraught with great danger, indeed if the principle underlying the Bill were applied to married women, it would create a lot of trouble, having regard to the social habits and customs prevailing in the country".

Until public opinion is more advanced it will be undesirable to legislate on the basis suggested.

I have great sympathy with the objects of the Bill; but in the present circumstances it is undesirable to legislate in the matter.

I am fortified by opinion of different Governments and Judges of several Courts.

S. C. GHOSE,—8-3-1924.

[Words printed in italics indicate the amendments suggested by the Committee.]

A

BILL

Further to amend the Indian Penal Code.

WHEREAS it is expedient further to amend the Indian Penal Code; It is hereby enacted as **XLV of 1860.** follows :—

1. This Act may be called the Indian Penal Code (Amendment) Act, **192**.

2. In section 375 of the Indian Penal Code **XLV of 1860.** *Amendment of section 375, Act XLV of 1860.* referred to as the said Code, in clause 1860. *Fifthly* and in the *Exception*, for the word "twelve" the word "fourteen" shall be substituted.

3. To section 376 of the said Code the following shall be added, *Amendment of section 376, Act XLV of 1860.* namely :—

"unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

4. In Schedule II to the Code of Criminal V of 1898. *Amendment of Procedure, 1848.* for the Schedule II, Code of entries against section 376 Criminal Procedure, the following entries shall 1898. be substituted, namely :—

"Of Rape.

376	<i>Rape— If the sexual intercourse was by a man with his own wife not being under 12 years of age.</i>	<i>Shall not arrest without warrant.</i>	<i>Summons</i>	<i>Bailable.</i>	<i>Not compoundable.</i>	<i>Imprisonment of either description for 2 years, or fine or both.</i>	<i>Court of Session, Presidency Magistrate or Magistrate of the first class.</i>
	<i>If the sexual intercourse was by a man with his own wife being under 12 years of age.</i>	<i>Shall not arrest without warrant.</i>	<i>Summons</i>	<i>Bailable.</i>	<i>Not compoundable.</i>	<i>Transportation for life, or imprisonment of either description for 10 years, and fine.</i>	<i>Court of Session.</i>
	<i>In any other case.</i>	<i>May arrest without warrant.</i>	<i>Warrant</i>	<i>Not bailable.</i>	<i>Ditto.</i>	<i>Ditto.</i>	<i>Ditto.</i>

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the
Bill further to amend the Indian
Penal Code.

(*Bill as amended.*)